

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JERRYL WARE,

Plaintiff

vs.

LEGAL MEDIATION PRACTICE, INC.,

Defendant

H-05-1491

CIVIL ACTION NO. \_\_\_\_\_

United States Courts  
Southern District of Texas  
FILED

APR 27 2005

Michael N. Milby, Clerk of Court

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Jerryl Ware, Plaintiff in the above-numbered and styled case, complaining of and against Legal Mediation Practice, Inc., and for cause of action would respectfully state the following:

**I. INTRODUCTION**

1. This is an action for damages brought by an individual consumer alleging that Defendant has violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), and the Texas Debt Collection Act, Tex.Fin.Code § 392.301 et seq. (hereinafter "TDCA"), which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

**II. JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendant transacts business here and/or the conduct complained of occurred here. Specifically, the Defendant telephoned the Plaintiff in Houston, Texas, in violation of the Federal Fair Debt Collection Practices Act. This action constitutes a tortious act in Texas and subjects the Defendant to suit in Texas.

### III. PARTIES

3. Plaintiff, Jerryl Ware, is an individual residing at 1300 Redford Street, Apartment 702A, Houston, Texas 77034.

4. Defendant, Legal Mediation Practice, Inc. (hereinafter LMP), is a Florida corporation engaged in the business of collecting debts in this state with its principal place of business located at 1919 Blanding Boulevard, Suite 19, Jacksonville, Florida 32210. The principal purpose of Defendant LMP is the collection of debts using the mails, and Defendant LMP regularly attempts to collect debts alleged to be due another. LMP may be served through the Texas Secretary of State's office, since it has no registered agent in Texas.

5. Defendant LMP is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

### IV. FACTUAL ALLEGATIONS

6. On or about November 3, 2004, Plaintiff entered into a payday loan transaction with Republic Bank and Trust Company in the amount of \$425.00. The annual percentage rate on the loan document is listed as 459.90%. Following default on the loan, collection of the outstanding debt was turned over to Defendant LMP. Plaintiff had been contacted by Defendant LMP numerous times in regards to the collection of the debt. In particular, Jerryl Ware had been contacted by Mr. Ray Pierson at Legal Mediation Practice on several occasions.

7. On March 24, 2005, Plaintiff sent a letter by facsimile and by certified mail, return-receipt requested, to Mr. Ray Pierson at Legal Mediation Practice requesting that they cease communication with Plaintiff regarding the collection of the debt.

8. On March 26, 2005 at 10:49 a.m., Plaintiff received a telephone call from Mr. Ray Pierson of Legal Mediation Practice. Mr. Pierson left a message for Plaintiff saying that he had called previously on March 21, 2005 and because he had not gotten a

response from Plaintiff that Legal Mediation Practice "will have to go forward" regarding the collection of the debt. He left a telephone number to be reached at, 1-800-201-0565 and ended the message saying, "I wish you the best of luck."

**V. CLAIM FOR RELIEF UNDER FAIR DEBT COLLECTION PRACTICES ACT**

9. Plaintiff incorporates paragraphs 1-8 above.
10. Defendant LMP violated the FDCPA by communicating with the Plaintiff by telephone regarding the debt in violation of 15 U.S.C. § 1692c(c).
10. As a result of these violations of the FDCPA, Defendant is liable to the Plaintiff for a declaratory judgment that Defendant's conduct violated the FDCPA, actual damages, statutory damages, and costs and attorney's fees.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA,
- B. Actual damages;
- C. Statutory damages pursuant to 15 U.S.C. § 1692(k)(a).
- D. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692(k)(a)(3), including fees in the event of appeal; and
- F. Such other and further relief as may be just and proper.

Respectfully submitted,



RICHARD TOMLINSON  
State Bar No. 20123500  
S.D. Texas Bar No. 111  
1 Greenway Plaza, Suite 325  
Houston, Texas 77046  
Telephone: (713) 627-2100  
Facsimile: (713) 627-2101

ATTORNEY FOR PLAINTIFF

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## (a) PLAINTIFFS

JERRYL WARE

(b) County of Residence of First Listed Plaintiff HARRIS COUNTY  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

RICHARD TOMLINSON  
ONE GREENWAY PLAZA, STE 325, HOUSTON, TEXAS 77046  
713-627-2100 EXT 219

## DEFENDANTS

LEGAL MEDIATION PRACTICE, INC.

**H-05-149**

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVEDUnited States Courts  
Southern District of Texas  
FILED

Attorneys (If Known)

**H APR 27 2005**

## (I. BASIS OF JURISDICTION) (Place an "X" in One Box Only)

- |                               |   |
|-------------------------------|---|
| J 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> Federal Question<br>(U.S. Government Not a Party) |
| J 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

## (III. CITIZENSHIP OF PRINCIPAL PARTIES) (Place an "X" in One Box for Plaintiff and one Box for Defendant)

PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4	
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6	

## (IV. NATURE OF SUIT) (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
J 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
J 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
J 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
J 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 440 Deportation
J 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit
J 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 490 Cable/Sat TV
J 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 810 Selective Service
J 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
J 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
J 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
J 195 Contract Product Liability			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
J 196 Franchise			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
J 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
J 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
J 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
J 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State Statutes
J 245 Tort Product Liability	<input type="checkbox"/> 445 Amer w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		
J 290 All Other Real Property	<input type="checkbox"/> 446 Amer w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		
			<b>FEDERAL TAX SUITS</b>	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- |                         |   |  |   |  |   |  |
|-------------------------|---|--|---|--|---|--|
| J 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|-------------------------|---|--|---|--|---|--|

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Fair Debt Collection Practices Act, 15 U.S.C. § 1692K(D), 28 U.S.C. § 1337

Brief description of cause:

Violation of Fair Debt Collection Practices Act by communicating with Plaintiff following "cease communication" letter

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaintVIII. RELATED CASE(S)  
IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

4/27/05

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select

the most definitive.

V.     **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition

for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box

**is checked, do not check (5) above.**

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes**

**unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint** Class Action Place an "X" in this box if you are filing a class action under Rule 23. E.R.Cv.P.

**Demand** In this space enter the dollar amount (in thousands of dollars) being demanded or in

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS-44 is used to reference the corresponding judge names for such cases.